

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

DANIEL B. YAHRAES, et al., :  
v. :  
Plaintiffs, :  
v. :  
RESTAURANT ASSOCIATES EVENTS, :  
CORP., et al., :  
Defendants. :  
-----X :  
10-CV-935 (MKB)  
225 Cadman Plaza East  
Brooklyn, New York  
May 18, 2012

TRANSCRIPT OF CIVIL CAUSE FOR SETTLEMENT CONFERENCE  
BEFORE THE HONORABLE STEVEN M. GOLD  
UNITED STATES MAGISTRATE JUDGE

## APPEARANCES:

For the Plaintiffs: JUDITH SPANIER, ESQ.  
Abbey, Spanier, Rodd & Abrams  
212 East 39<sup>th</sup> Street  
New York, New York 10016

LLOYD ROBERT AMBINDER, ESQ.  
Virginia & Ambinder  
111 Broadway  
New York, New York 10006

For the Defendants: ANDREW P. MARKS, ESQ.  
Littler Mendelson PC  
900 Third Avenue  
New York, New York 10022

JEROME PATRICK COLEMAN, ESQ.  
JOSEPH CARTAFALSA, ESQ.  
Putney, Twombly, Hall & Hirson  
521 Fifth Avenue  
New York, New York 10175

Court Transcriber: SHARI RIEMER  
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Saratoga Springs, New York 12866

1                   THE COURT: This is Civil Cause for Settlement  
2 Conference, Yahraes v. Restaurant Associates, et al., 10-CV-  
3 935.

4                   Let me have appearances for the punitive class  
5 plaintiffs.

6                   MS. SPANIER: Judith Spanier, Abbey Spanier for  
7 punitive class plaintiffs and individual -- the named  
8 plaintiffs, the Hanagarnes whose name is in the caption.

9                   THE COURT: Thank you. And your co-counsel is here  
10 as well?

11                   MR. SCHLEY: Yes, Mitchell Schley, Law Offices of  
12 Mitchell Schley, same individuals.

13                   THE COURT: All right. And the original first named  
14 punitive class representative Daniel Yahraes remains in the  
15 case but through new counsel. Please note your appearance.

16                   MR. AMBINDER: Lloyd Ambinder with the firm of  
17 Virginia & Ambinder.

18                   THE COURT: Thank you, Mr. Ambinder. For Restaurant  
19 Associates and its related defendants, if any.

20                   MR. MARKS: The law firm of Littler Mendelson by  
21 Andrew Marks.

22                   THE COURT: And who's with you today, Mr. Marks?

23                   MR. MARKS: I have Jennifer McConnell of Compass  
24 Group.

25                   THE COURT: Thank you. And for Amerivents and any

1 related defendants.

2 MR. CARTAFALSA: Putney, Twombly, Hall & Hirson by  
3 Joe Cartafalsa.

4 MR. COLEMAN: And Jerome Coleman.

5 THE COURT: And with you today?

6 MR. COLEMAN: James Della Pace.

7 THE COURT: So we have been discussing settlement for  
8 about three and a quarter hours together today and it is not  
9 the first long session we've devoted to it but I think we have  
10 reached an agreement and I would like to state its essential  
11 terms on the record not to create an enforceable written  
12 instrument because it contemplates procedures that we all have  
13 to go through before we get to that point but sort of as a  
14 placeholder so we know what we've agreed to today and can look  
15 back going forward lest there be any confusion.

16 The total settlement fund that's been agreed to is  
17 the amount of \$600,000.00. That fund will be funded by  
18 \$300,000.00 contributions from Restaurant Associates and  
19 Amerivents for a total of \$600,000.00. That amount includes  
20 any claims for attorney's fees, any claims of any named  
21 plaintiffs for any special payments, and the costs of  
22 administering the class proceedings and settlement proceedings  
23 that are anticipated by the parties.

24 Although there was some discussion of a reverter  
25 provision in the agreement during our negotiations there is no

1 provision for a reverter agreement in the final agreement  
2 reached by the parties.

3                   The parties contemplate that they will consent to  
4 adjudication -- reassignment for all purposes to this  
5 magistrate judge, that they will submit a motion for  
6 preliminary approval of class certification and the settlement  
7 terms on consent, that they will use their best efforts to  
8 agree upon an appropriate notice to the class, and to schedule  
9 a fairness hearing sometime in the fall or latter part of  
10 2012.

11                   It is anticipated that all claims asserted in this  
12 lawsuit will be released. It is anticipated that that  
13 includes any cross-claims between the defendants and it is  
14 expected that the plaintiffs will not pursue any claims for  
15 the wages or tips at issue and described in the complaint in  
16 this lawsuit in any way that implicates these defendants  
17 before the court today once this settlement is consummated.

18                   There was mention, and I don't know, Ms. Spanier, if  
19 you referenced what you said to me in passing as the  
20 defendants were joining us, but I think it was understood that  
21 this agreement is reached and will be binding without regard  
22 to any legislative changes that may or may not occur  
23 concerning the use of the language service charge in an  
24 agreement between a supplier of services and its clients.

25                   Ms. Spanier, have I captured the essential terms

1 we've agreed to today accurately and they are acceptable to  
2 you as a representative for the punitive class?

3 MS. SPANIER: Yes, you have, Your Honor.

4 THE COURT: Mr. Ambinder, with respect to Mr.  
5 Yahraes, are these consistent with the understanding he had  
6 when he agreed to these terms?

7 MR. AMBINDER: Yes, Your Honor.

8 THE COURT: Mr. Marks, have I described the  
9 Restaurant Associate defendant's agreement accurately?

10 MR. MARKS: Yes, Your Honor.

11 THE COURT: Is there anything you would add to it in  
12 any way?

13 MR. MARKS: No, thank you.

14 THE COURT: Mr. Cartafalsa, what about with respect  
15 to Amerivent?

16 MR. CARTAFALSA: Yes, Your Honor. We have nothing to  
17 add.

18 THE COURT: All right. Mr. Ambinder, we didn't pick  
19 you up on the record but you agree that Mr. Yahraes finds  
20 these terms acceptable as well; correct?

21 MR. AMBINDER: Yes, I do, Your Honor.

22 THE COURT: Thank you, Mr. Ambinder.

23 What I'd like you -- we have some interstitial dates  
24 now to fill in that if counsel want to sit here and do that  
25 now it's fine with me and I'll come back in another twenty or

1 thirty minutes and put them on the record but if you'd like to  
2 consult your calendars and some of the staff that might be  
3 employed to accomplish them I have no objection to getting a  
4 letter from you in two weeks that has a stipulated schedule  
5 for the motion for preliminary approval. I think the 216(b)  
6 process is over in this case. Have we ever sent out a 216(b)  
7 notice?

8 MS. SPANIER: We have, Your Honor.

9 THE COURT: So we're now left with all of the Rule 23  
10 acuchamons that follow a class action settlement and I'd like  
11 to see a joint proposed schedule in two weeks and maybe you  
12 can file a consent form at the same time so that I can be the  
13 one to review and approve it instead of asking Judge Brodie to  
14 get acquainted with these turbulent waters.

15 Is there anything else anybody wants to raise before  
16 we adjourn for the day?

17 MS. SPANIER: Your Honor, we simply want to thank you  
18 for your efforts in this mediation on the record.

19 THE COURT: It's a pleasure. When you have capable  
20 well prepared even tempered attorneys coming to work is a joy.  
21 And with you guys it's not so bad either. It's still sunny  
22 out. Enjoy the afternoon. Take care.

23 \* \* \* \* \*

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1 I certify that the foregoing is a court transcript from  
2 an electronic sound recording of the proceedings in the above-  
3 entitled matter.



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6 Shari Riemer

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8 Dated: August 1, 2012

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